

<p>CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</p> <h2 style="margin: 20px 0;">STAFF REPORT</h2>	<p>Hearing Date/Agenda Number P.C. 10-22-03 Item: 4.a.</p>	
	<p>File Number H03-042</p>	
	<p>Application Type Appeal of Site Development Permit</p>	
	<p>Council District 3</p>	<p>SNI Area Thirteenth Street</p>
	<p>Planning Area Central</p>	
	<p>Assessor's Parcel Number(s) 249-64-001</p>	
<p>PROJECT DESCRIPTION Completed by: John Davidson</p>		
<p>Location: Watson Park, north and south sides of Jackson Street, west of Highway 101</p>		
<p>Gross Acreage: 37.5 Net Acreage: 37.5 Net Density: N/A</p>		
<p>Existing Zoning: CO Commercial Office and R-1-8 Residence Existing Use: Watson Park</p>		
<p>Proposed Zoning: No change Proposed Use: 9,000 square foot skateboard park</p>		
<p>GENERAL PLAN Completed by: JED</p>		
<p>Land Use/Transportation Diagram Designation Public Park and Open Space</p> <p style="text-align: right;">Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations </p>		
<p>SURROUNDING LAND USES AND ZONING Completed by: JED</p>		
<p>North: Single-Family Residences R-1-8 Residence</p>		
<p>East: US Highway 101, Industrial LI Light Industrial</p>		
<p>South: Single-Family Residences R-1-8 Residence</p>		
<p>West: Single-Family Residences R-1-8 Residence</p>		
<p>ENVIRONMENTAL STATUS Completed by: JED</p>		
<p> <input type="checkbox"/> Environmental Impact Report certified <input type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on </p> <p style="text-align: right;"> <input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete </p>		
<p>FILE HISTORY Completed by: JED</p>		
<p>Annexation Title: Original City Date: March 27, 1850</p>		
<p>PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION</p>		
<p> <input type="checkbox"/> Approval Date: _____ Approved by: _____ <input checked="" type="checkbox"/> Uphold Director's decision <input type="checkbox"/> Action <input type="checkbox"/> Denial <input type="checkbox"/> Recommendation </p>		
<p>APPLICANT/OWNER APPELLANT</p>		
<p> City of San Jose Department of Public Works Attn: William Tucker 2 N. Second Street San Jose, CA 95113 Kevin Williams 557 N. 22nd Street San Jose, CA 95112 </p>		

Department of Public Works

No comments or requirements

Other Departments and Agencies

See conditions of approval of H03-042.

GENERAL CORRESPONDENCE

See Notice of Permit Appeal dated 9/5/03 and related correspondence submitted by appellant.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

On July 21, 2003, the City of San Jose Public Works Department applied for a Site Development Permit to construct a 9,000 square foot skate facility on a 0.58 acre site within Watson Park, located on the north and south sides of Jackson Street, directly west of Highway 101. The City of San Jose owns Watson Park, which is a Neighborhood Park comprised of approximately 37.5 acres. The park is a major public open space, and includes a number of other community facilities, including a dog park, a Watson/Las Milpas Community Gardens, Watson Neighborhood Community Center, Watson Soccer Bowl, and a number of play fields. The site also includes the Empire Gardens Elementary School.

Watson Park is surrounded by single-family residences to the north, south, and west, and Highway 101, Coyote Creek, and industrial uses to the east.

Project Description

The skate park will be located directly south of an existing parking lot, and directly west of the community garden. The skatepark will be surrounded by a log barrier, and will include amenities including drinking fountains, benches, trash cans, and bike racks.

The skatepark will be open during daylight hours and operate as a “dawn to dusk” facility, which is the same hours of operation as the park. There is no outdoor lighting included as a part of the project. No supervisory personnel are planned for the park. No ancillary uses, such as skateboard rental, or concessions, are planned for the facility.

The project was heard by the Director of Planning on August 27, 2003. At that hearing the appellant, Kevin Williams, spoke against the project, indicating that the City had not properly addressed pedestrian and traffic safety concerns associated with the project. Mr. Williams’ main concern was that skateboarders coming to the skatepark would increase the likelihood of vehicle-versus-pedestrian accidents in the area and posed a hazard.

The Director of Planning approved the project on September 5, 2003, and Mr. Williams appealed the permit the same day. Mr. Williams’ appeal letter is attached to this staff report. His main concern is the behavior of skateboarders as they are coming to and leaving the park. Mr. Williams feels that children will not walk to the park, but will instead ride in the street and not follow traffic laws. The appellant suggests a number of possible ways to control off-site pedestrian traffic, which are addressed below.

ENVIRONMENTAL REVIEW

The proposed skate park project was found to be exempt from the requirements of the California Environmental Quality Act, as amended, under the provisions of Section 15301. The project consists of the minor alteration of an existing public park facility. The proposed skate park does not constitute a significant expansion of the existing public park use. The appellant's concerns regarding potential pedestrian safety hazards in transit to or from the park do not constitute a potentially significant environmental impact and are not a CEQA issue.

A Biological Assessment and an Archaeological Evaluation Report were prepared for the project. The project will not result in any significant biological or archaeological impacts. The proposed project maintains a riparian corridor setback of at least 300 feet. The project includes the standard conditions regarding archaeological resources.

GENERAL PLAN CONFORMANCE

The proposed skate facility project conforms to the site's San Jose 2020 General Plan Land Use/Transportation Diagram designation of Public Park/Open Space. The proposed project implements the recommendations of the City's "Greenprint for Parks and Community Facilities and Programs". The Greenprint encourages the development of youth through the modernization of parks and outdoors sports facilities. Development of a skateboard park is specifically identified in the Capital Action Plan for District Three.

ANALYSIS

The project before the Planning Commission is the appeal of the Director's decision to approve a Site Development Permit. The decision of the Planning Commission is final with respect to this Site Development Permit application. In accordance with Section 20.100.270 of the Municipal Code, the Planning Commission shall hear the matter de novo, or can review the project anew or over again, and is not bound by the Director's previous decision. The analysis includes a brief discussion of the Site Development Permit process; traffic generated by the project, and responses to the appellant's comments.

Site Development Permit process

The proposed project was referred to and reviewed by the appropriate City departments in accordance with the standard protocol for the development review process. The Site Development Permit as approved by the Director incorporates their comments as a part of drafting appropriate permit conditions. The Police Department and the Department of Transportation received routed copies of the proposal. Neither department voiced any concerns regarding off-site pedestrian traffic.

Traffic

The Department of Parks, Recreation, and Neighborhood Services (PRNS) expects approximately 10 to 30 skateboarders to use the facility each day, with approximately five skateboarders present at any given time. This is not a significant increase to the current number of Watson Park users. During a tour by PRNS staff, similar numbers of users were observed at skateparks in other jurisdictions. The skate park is expected to be a neighborhood-serving use, with skateboard facilities ultimately being planned for each City Council district.

One skatepark has already been developed and opened in the City of San Jose, Stonegate skate park, next to Stonegate elementary school near Tully Road. The facility has been open for the past two months and to date there have been no reports of traffic incidents involving skateboarders traveling to or from the skate park.

Staff has obtained vehicle-versus-pedestrian accident statistics for the five intersections closest to Watson Park. Three of the five intersections analyzed were on Taylor Street at 21st Street, Monferino Drive, and 23rd Street. The other two intersections were Jackson Street at 21st and 22nd Streets. The statistics show that in the past two years there has been only one pedestrian-involved accident at the five intersections. This confirms that the neighborhood is reasonably safe for non-auto travel. The relatively small increase in the number of pedestrians in the area is not expected to increase accident rates at surrounding intersections, and therefore staff does not believe that special measures are required to ensure the safety of skateboarders traveling to and from the site.

Response to Appellant's Comments

A copy of the letter included with the Notice of Permit Appeal submitted by Mr. Kevin Wayne Williams is attached to this staff report. In that letter, Mr. Williams provides his overview of the problem and states that it is the City's responsibility to solve the problem. Staff disagrees that there is, in fact, a pedestrian safety problem created by the project that the City should solve. He outlines a number of ways that the project could be conditioned to reduce the potential for accidents outside of Watson Park. Below are his suggestions, with staff responses.

1. **Require adult accompaniment at a supervised facility.** Mr. Williams suggests making the facility fully supervised, with adult guardians required to be in attendance for each skater.

According to PRNS staff, the skatepark is being developed using their general philosophy of open recreational facilities. The skateboarding facilities are being specifically developed to not require supervision by parents or City staff. The intent is to provide a safe public place for a legitimate recreational opportunity, which can be done without requiring constant supervision.

2. **Require rental of city-provided skates and boards.** Mr. Williams indicates that requiring City rental and forbidding use of privately-owned skateboards would reduce off-site traffic risk.

From staff's perspective, this approach is unworkable, because of the operations and maintenance implications on City staff. This suggestion would also make the skatepark a fee-based operation, which would have a deterrent effect on the skatepark's use. It would not reduce the potential for pedestrians.

3. **Traffic Enforcement.** The appellant suggests that additional police officers should patrol the area when school is not in session.

Assigning police officers to sweep the surrounding area is a condition that has not previously been applied to land use permits for public parks. Land use permits typically deal with conditions at the project site or immediately adjacent to the project. The closest analogy is that on-site security personnel are sometimes required for nightclubs and other late-night uses, but are not required off-site. Having security on site at the skatepark does nothing to alleviate the appellant's pedestrian traffic concerns in the surrounding neighborhood.

4. **Cobblestoning or installing textured roads and sidewalks.** The appellant states that textured roads would prevent skateboarders from riding in the neighborhoods surrounding Watson Park.

Installing textured pavement on public streets and sidewalks would be costly for the City to install and maintain. This suggestion would provide relatively little, if any, benefit to the surrounding neighborhood to address Mr. Williams' concern. Automobiles and bicycles would inadvertently be impacted by this approach, and neighborhood residents might oppose the new surface. In addition, Municipal Code Section 11.84 indicates that it is legal for people on roller skates and similar vehicles to use the sidewalk and crosswalks. This section states, "No person upon roller skates, or riding in or by means of any coaster, toy vehicle or similar device, shall go upon any roadway except while crossing a street in a crosswalk, and when so crossing such person shall be granted all the rights and shall be subject to all of the duties applicable to pedestrians."

Conclusion

The proposed project provides a public amenity (a skatepark) in an appropriate location (a larger City park). The project is expected to draw approximately 10 to 30 users per day, and is therefore expected to have minimal off-site impacts, particularly when viewed in the context of the number of people coming to the site for school or to enjoy existing park amenities. The Department of Transportation and Police Department have reviewed the proposed project, and neither department has expressed any concerns regarding off-site pedestrian traffic.

COMMUNITY OUTREACH

A public hearing notice for the project appeal was mailed to all property owners and tenants within 500 feet of the subject site. Notice was previously provided for the Director's Hearing. The proposed project was referred to the Thirteenth Street SNI NAC and they had no concerns. The applicant held three community meetings and the residents were generally supportive of the project.

RECOMMENDATION

Planning staff recommends the Planning Commission adopt a resolution upholding the Planning Director's decision to approve Site Development Permit H03-042 for the following reasons:

1. The proposed development conforms to the subject site's General Plan Land Use Diagram Designation of Public Park and Open Space.
2. The proposed skatepark will not significantly increase the number of pedestrians in the Watson Park area.
3. The proposed project provides an amenity to the general public, and is expected to have minimal off-site impacts.
4. The Department of Transportation and the Police Department have reviewed the project and neither agency has voiced concerns about off-site pedestrian traffic. The Department of Transportation has provided accident data for the five closest intersections to the park, which showed a single pedestrian-involved accident over the past two years.
5. Watson Park includes existing amenities including a dog park, community center, play fields, community

gardens, and Empire Gardens Elementary School.

FINDINGS

1. The interrelationship between the orientation, location and elevations of the proposed structure(s) and other uses on-site are mutually compatible and aesthetically harmonious in that:
 - a. The proposed structure(s) are comparable in terms of mass, scale and height.
2. The orientation, location and elevation of the proposed structure(s) and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood in that:
 - a. The structures proposed on site, which include concrete features, benches, and fencing, are comparable in terms of mass, scale and height with existing adjacent or nearby structures.
 - b. The proposed structures, which include concrete terrain features, benches, and fencing, do not unreasonably interfere with the light and air available to adjacent sites.
 - c. The use of the site will not interfere with the use of adjacent properties since sufficient buffering between uses will be provided.
3. Under the provisions of Section 15301 of the State Guidelines from Implementation of the California Environmental Quality Act (CEQA), this project was found to be exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.
4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood in that:
 - a. Substantial landscaping will be added to the site and an adequate automatic irrigation system will be provided to support this landscaping.
 - b. Outdoor facilities will including trash receptacles, fences, and seating will be integral parts of the proposed site.
5. Traffic access, pedestrian access and parking are adequate in that:
 - a. Pedestrian walkways will be provided to the site entrance.
 - b. Bike racks will be provided as a part of this project.
6. This site has a designation of Public Park/Open Space on the adopted San José 2020 General Plan Land Use/Transportation Diagram and this application is consistent with this designation.
7. The proposed site is consistent with the City's Riparian Corridor Policy Study in that the proposed skateboard park maintains a minimum 100 foot setback from the edge of the riparian canopy associated with Coyote Creek.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved Site Development plans entitled "Watson Park Skate Facility" received August 18, 2003 on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Deadline for Commencing Construction.** This Site Development Permit shall automatically expire two years from and after the date of issuance hereof by said Director if within such two-year period construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Site Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
4. **Revocation.** This Site Development Permit is subject to revocation for violation of any of its provisions or conditions.
5. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
6. **Acceptance.** The "Acceptance of Permit and Conditions" form shall be ***signed, notarized, and returned*** to the Department of Planning, Building and Code, Enforcement within **60 days** from the date of issuance of permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.*
7. **Landscaping.** Planting and irrigation are to be provided as indicated on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
8. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a

manner to discourage illegal dumping.

9. **Colors and Materials.** All colors and materials are to be those specified on the approved plan set.
10. **Archaeology, Human Remains.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance. Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
11. **Archaeology, Other Resources.** In the event that significant cultural materials other than human remains are exposed during site clearing or during sub-surface construction, construction operations are required to stop within 25 feet of the find. Additionally, in the event that significant cultural materials are found, the City shall retain a qualified archaeologist to review and evaluate cultural materials and develop further recommendations.

ATTACHMENTS

- ✍ H03-042, Site Development Permit and plan set
- ✍ Notice of Permit Appeal and letter submitted by Kevin Williams, received 9/5/03

C: Jose Balingit, PRNS
Appellant